

<b>STATE OF SOUTH CAROLINA</b>	)	<b>BEFORE THE CHIEF PROCUREMENT OFFICER</b>
<b>COUNTY OF RICHLAND</b>	)	
	)	<b>DECISION</b>
In the Matter of Protest of:	)	
	)	<b>CASE No. 2009 - 111</b>
All Pro Trailers	)	
	)	
	)	
Department of Public Safety	)	<b>POSTING DATE:</b>
IFB No. 09-244931	)	
<u>Enclosed 6 x 12 Cargo Trailers</u>	)	<b>April 7, 2009</b>

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from All Pro Trailers (All Pro). With this invitation for bids (IFB), the Department of Public Safety (DPS) attempts to procure seventy-two enclosed 6 x 12 cargo trailers. In the letter, All Pro protested DPS's intent to award to Trailerlogic, LLC alleging:

Resident vendor preference (as defined in section 11-35-1524) would not apply to vendor Trailerlogic LLC 4102 highway 29 north Belton SC 29627. Section 11-35-1524 provides a preference to vendors offering South Carolina end-products. Vendor listed manufacturing plant "Well Cargo" is located in Waycross GA. All Pro of Yulee Inc. D/B/A All-pro trailers has listed an authorized service center/Dealer in the state of SC at a savings to the state of SC \$25,025.00. Over proposed vendor Trailerlogic LLC

As the issues to be decided are clear, this decision is prepared based upon a review of the procurement file without the benefit of a hearing.

#### **NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

#### **FINDINGS OF FACT**

The following dates are relevant to the protest:

1. On February 7, 2009, DPS issued the IFB for seventy-one trailers.
2. On February 13, 2009, DPS issued Amendment No. 1, the only amendment to the solicitation. In the amendment, DPS altered the specifications for the trailers, added a requirement for manufacturer certification by the National Association of Trailer Manufacturers, revised the required delivery date, and added another trailer bringing the total required to seventy-two.

3. On March 2, 2009, DPS opened the following bids:

<u>Bidder</u>	<u>Bid Amount</u>
All Pro	\$166,495.00
VERDE	180,000.00
VERDE (2)	187,776.00
Trailerlogic	191,520.00
American Trailer	192,024.00
Air-Tight	203,364.00
Atlanta Custom	205,200.00
Ralph Johnson	208,260.00
Leonard Aluminum	208,584.00
Southern Dimension	215,640.00
Town & Country	229,456.00
Modular Office	232,992.00
Bear Creek	235,944.00
LBN Enterprises	319,633.92

4. DPS rejected All Pro's bid for failure to acknowledge the amendment.

5. As required by SC Code section 11-35-1524, DPS applied the South Carolina preferences requested by the remaining bidders and adjusted the bids for comparison as follows:

<u>Bidder</u>	<u>Preferences Requested</u>	<u>Bid Amount</u>
Trailerlogic	RVP & USEP	\$197,265.60
VERDE	USEP	198,000.00
VERDE (2)	USEP	206,553.60
American Trailer	USEP	211,226.40
Ralph Johnson	RVP & USEP	214,507.80
Leonard Aluminum	RVP & USEP	214,841.52
Air Tight	USEP	223,700.40
Atlanta Custom	None	225,720.00
Town & Country	RVP & SCEP	229,456.80
Southern Dimension	None	237,204.00
Modular Office	None	256,291.20
Bear Creek	USEP	259,538.40
LBN Enterprises	RVP & USEP	329,222.94

Legend:

RVP = South Carolina Resident Vendor Preference

USEP = United States End Product Preference

SCEP = South Carolina End Product Preference

5. On March 9, 2009, after rejecting All Pro's bid and applying the preferences, DPS posted an intent to award to Trailerlogic.

6. On March 10, 2009, All Pro submitted its protest to the CPO.

## CONCLUSIONS OF LAW

All Pro alleges that Trailerlogic does not qualify for the preferences because Trailerlogic “listed manufacturing plant “Well Cargo” is located in Waycross GA.”

Regarding application for the state’s bidding preferences, the Consolidated Procurement Code (the Code) reads: “A preference of seven percent must be provided to vendors who are residents of South Carolina or whose products are made, manufactured, or grown in South Carolina as set forth in this section.” [11-35-1524(A)] [Emphasis added]

Regarding application of the preferences, the Code reads: “Competitive procurements made by governmental bodies shall be made from vendors resident to South Carolina or vendors who bid end-products made, manufactured, or grown in South Carolina or in the United States if available, provided that (1) the bidder has certified in writing in the bid that he or she is resident to the State, or (2) the bidder has certified in writing in the bid that the end-product was made, manufactured, or grown in South Carolina or in the United States, (3) the end-product is available, and (4) the cost of the end-product is not unreasonable. In order to receive the award the vendor must be a responsible and responsive bidder, and the bid must otherwise comply with the Procurement Code and Regulations.” [11-35-1524 ( C)] [Emphasis added] In its bid, Travellogic requested the resident vendor preference.

Regarding qualification for the resident vendor preference, the Code reads:

(6) "Resident vendor" means a vendor who is considered to be a resident of this State if the vendor:

(a) is an individual, partnership, association, or corporation that is authorized to transact business within the State,

(b) maintains an office in the State,

(c) maintains an inventory for expendable items which are representative of the general type of commodities on which the bid is submitted and located in South Carolina at the time

of the bid having a total value of ten thousand dollars or more based on the bid price, but not to exceed the amount of the contract, or is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in Section 1563 of the Internal Revenue Code) of such manufacturer, and

(d) has paid all assessed taxes.

[11-35-1524(B)(6)]<sup>1</sup>

Regarding qualification for the United States End Product Preference, the Code reads “the cost of an end-product made, manufactured, or grown in other states of the United States is unreasonable if the bid exceeds by more than two percent the lowest qualified bid on the same or similar end-product which is made, manufactured, or grown in a foreign country or territory.”

[11-35-1524(B)(5)(b)] In its bid, Travelogic requested the United State End Product Preference.

### **DETERMINATION**

DPS properly rejected All Pro’s bid as nonresponsive because All Pro failed to acknowledge Amendment No. 1. While the Code does allow minor deviations from acknowledgement of an amendment by a bidder if clear evidence exists that the bidder took the amendment into consideration in his bid. [11-25-1520(13)] In this case, such waiver as a minor bidding irregularity is impossible because DPS added another whole trailer by the amendment. While the amended IFB required bidders to offer prices for 72 trailers, All Pro only bid 71 trailers. Consequently, All Pro’s bid was fatally nonresponsive.


The CPO finds further that Trailerlogic did properly request the resident vendor preference and the United State End Product Preference. Travelogic did not request a South Carolina End Product Preference, as All Pro seems to allege. In its bid, Trailerlogic noted its

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<sup>1</sup> All Pro has not alleged that Trailerlogic does not qualify as a resident vendor under any of these finer points of law.

home office address, its notice address, and its address qualifying for the in-state vendor preference as 4102 Highway 29 North, Belton, SC 29627. As that address is within the borders of the State of South Carolina, Trailerlogic qualified for the seven percent (7%) Resident Vendor Preference regardless of where its trailers are manufactured. Further, Trailerlogic requested the United States End Product Preference noting its trailer manufacturer as "Wells Cargo" that All Pro wrote "is located in Waycross GA", which would certainly qualify for made in the United States

Regarding the matters of this protest, it is apparent that DPS applied the Code and the South Carolina preferences appropriately in determining the award to Travelogic. Therefore, the protest is denied.



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R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

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April 7, 2009

Date

Columbia, S.C.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

# ALL PRO TRAILERS

PO BOX 760  
STARKE, FL 32091-0760  
PHONE: (904) 964-8331  
FAX: (904) 964-3842

PLANT LOCATION  
U.S. 301, 2 MILES SOUTH  
STARKE, FLORIDA

Chief Procurement officer,  
Materials Management Office  
1201 Main Street  
Suite 600  
Columbia Sc 29201  
Fax (803) 737-0639  
RE: Contract Number IEB09-244931  
Description 6x12 cargo Trailers

This is a protest in regards to the listed contract.  
Resident vendor preference (as defined in section 11-35-1524) would not apply to vendor  
Trailerlogic LLC 4102 highway 29 north Belton SC 29627  
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products  
Vender listed manufacturing plant "Well Cargo" is located in Waycross GA.  
All Pro of Yulee Inc D/B/A/ All-pro trailers has Listed an authorized service center  
/Dealer in the state of SC at a saving to the state of SC \$25,025.00. Over proposed  
vender Trailerlogic LLC  
Your prompt attention is requested to this issue

Richard Rothberg

  
Government sale manager

CC: Certified Mail  
3/10/09

RECEIVED  
MAR 10 2009 9:03AM  
HP LASERJET FAX  
P. 1

**Imperial**  
TRAILER CORPORATION